IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.1290 OF 2007

Mukunda Bhivsam Mahajan,
Age 45 years, Occ. Service,
having his address at Survey No.18/2/1,
Sudarshan Park, Ingale Nagar,
Warje, Pune-58.
....Petitioner.

Vs.

1. The State of Maharashtra
   Through its Department of Urban Development,
   having its office at Mantralaya, Mumbai.

2. Pune Municipal Corporation
   through its Commissioner
   having its office at Shivaji Nagar, Pune.

3. The Commissioner,
   Pune Municipal Corporation,
   having his office at Pune Municipal Corporation,
   Shivaji Nagar, Pune.

4. Sujata Ganesh Tilekar,
   Adult, Indian Inhabitant,
   Residing at 4, Prabhu Apartment,
   Vanwadi, Shivarkar road,
   Pune-40.
   ...Respondents.

Shri.Rajiv Patil i/by Dushyant Purekar for the Petitioner.

Mrs. M.P.Thakur, AGP. for the Respondent No.1.

Shri. V.G. Mujumdar for the Respondent Nos.2 and 3.

Shri. Lalita Panchakshari for the Respondent No.4.

CORAM: S.B.MHASE &
R.S.MOHITE, JJ.
DATE : 25/4/2007.

ORAL JUDGMENT (Per R.S. Mohite, J.)

1. Rule. By consent, of the parties, rule made

returnable forthwith.

2. This petition seeks to quash and set aside a Government Resolution dated 8.11.2006 and for directions upholding a resolution dated 27.6.2006 passed by the General Body of the Respondent No.2 Pune Municipal Corporation. Further direction is also sought against the respondent Nos.2 and 3 to appoint the petitioner to the post of Dy. Project Officer in the Urban Development Department of the respondent No.2-Corporation.

3. The brief facts of the case are as under.

a) By a newspaper advertisement dated 7.4.2005 the Pune Municipal Corporation sought applications for appointment to 33 different categories of posts in the Pune Municipal Corporation on conditions as mentioned in the advertisement. In respect of the post of Dy. Project Officer, several applications including the application of the petitioner and the respondent No.5 were received by the Pune Municipal Corporation.

b) The petitioner who had applied was a person already in the services of the Pune Municipal Corporation and who had been working in the Municipal Corporation since 1987.

c) The record indicates that the applications received were placed before the Selection Committee constituted and contemplated by Section 54(1) of the Bombay Provincial Municipal Corporation Act,1949 (hereinafter referred to as "the Act"). To cut the matter short, after due consideration the Selection Committee recommended the name of the Respondent No.4 for selection and placed the name of the present petitioner on the waiting list.

d) By his letter dated 18.4.2006 addressed to the Municipal Secretary, the Additional Municipal Commissioner of Pune Municipal Corporation recorded the recommendations of the Selection Committee and requested that the matter be placed for consideration before the Human and Child Welfare Committee and the General Body for sanction as required under Section 53(1) of the Act.

e) The matter was considered by the Human and Child Welfare Committee of the Pune Municipal Corporation on 26.4.2006 and the said committee approved the name of the petitioner for the said post and name of Respondent No.4 was placed in the waiting list. It resolved that their recommendation be placed before the General Body of the Corporation.

f) Accordingly, the matter was placed before the General Body of the Pune Municipal Corporation and the General Body considered the matter on 27.6.2006. The General Body accepted the recommendations of the Human and Child Welfare Committee and approved the appointment of the petitioner by exercising its powers under Section 53(1) of the Act.

g) It appears that after the resolution was passed by the General Body, the Municipal Commissioner addressed a letter dated 1.2.2006 to the Principal Secretary, Urban Development Department, Mantralaya. He mentioned the factual position and raised an objection against the resolution passed by the General Body. It appears from this letter that it was his contention therein that the said resolution was wrongly passed because the recommendation of the Selection Committee was binding on the General Body under Section 54(3) of the said Act. On receipt of the letter by the Municipal Commissioner of the Pune Municipal Corporation, the Government of Maharashtra passed the impugned Government Resolution dated 8.11.2006. By the said resolution, Resolution No.40 passed by the General Body of the Pune Municipal Corporation on 27.6.2006 as well as some other resolutions (and with which we are not concerned in this petition) were rescinded. The sole reason which is given in the impugned Government Resolution passed by

the State of Maharashtra, on 8.11.2006 for rescinding the General Body Resolution is that the said resolution was passed without taking into account the recommendation of the Selection Committee as required by Section 54(3) of the Act.

h) After the passing of the impugned General Body Resolution, by a further order dated 14.12.2007, the Additional Municipal Commissioner passed an order appointing Respondent No.4 on lumpsum monthly payment starting from Rs.5500/- for the first year, Rs.6000/- for the second year and Rs.6500/- for the third year and on further condition that on the completion of period of three years satisfactorily, a regular appointment in the pay scale of 5500-13850 with permitted allowances would be considered. It is, in these circumstances, that the present writ petition came to be filed on 19.1.2007.

4) We have heard both the sides and perused the record as well as relevant provisions.

5) The Advocate for the petitioner has relied upon the provisions of Rule-2 of Chapter -III in Schedule-D of the Act. The said Rule reads as under.

> "Before making an appointment to any post referred to in Rule 1 applications shall be

> invited for such post by advertisement in the local newspapers and the applications received shall be scrutinised by the Commissioner who shall submit to the Corporation, through a committee if so required by the Corporation a list arranged in order of preference of such persons out of those who have applied as he considers qualified for the post".

Strong reliance is placed upon the proviso of this Rule which reads as follows.

> "Provided that, if the Corporation is of the opinion that any officer in municipal service possessing the qualifications prescribed under rule 3 is a fit person to be appointed to the post, it may appoint such officer to the post without following the procedure prescribed in this rule".

6) It was contended that the Corporation, in law, would act through General Body and if the Corporation was of the opinion and since the petitioner was a person possessing the qualifications required for the post, the Corporation can appoint such person for the post without following the procedure prescribed in the Rule. As regards this submission, it does appears that the

Corporation is not required to follow the procedure as prescribed if it has an eligible in service candidate. The procedure of advertisement is prescribed by Sub-Rule(2). In the instant case, the procedure prescribed by Sub Rule (2) is followed and therefore, the proviso in question will not have any relevance.

7) It was then contended that under Section 53(1) of the Act if the salary of the officer was over four hundred rupees, power to appoint such Municipal Officer vested in the Corporation. The contention was, once such power was vested in the Corporation then it could be exercised only through the General Body of the Corporation and in view of this fact, the resolution passed by the General Body of the Corporation approving the petitioner's appointment was final and binding. To meet this contention, the A.G.P. brought to our notice and relied upon the provision of Section-54 of the Act and pointed out that, it was the Staff Selection Committee which was authorised to select any candidate for appointment in the Municipal Service. She also placed reliance on Section-54(3) which provides that every authority competent to make appointment in the Municipal Service should make an appointment of the candidates so selected in accordance with the directions given by the Staff Selection Committee. In our view on a proper and harmonious reading of Section 54(3) and

Section 53(1) of the Act, the selection which the Staff Selection Committee can make pertains only to appointments which inter alia exclude posts referred to in Section 53(1) of the Act. Sub rule-(1) of Section 53 provides that the power to appoint an Municipal Officer whose minimum monthly salary, exclusive of allowances exceeds Rs.400/- shall vest in the Corporation. On a plain reading therefore, Staff Selection Committee cannot make a selection on posts where the minimum monthly salary, exclusive of allowances, exceeds Rs.400/-. In this view of the matter, the Staff Selection Committee was not competent to conduct the selection for the post for which the petitioner had applied and which admittedly carried a minimum monthly salary, exclusive of allowances, exceeding Rs.400/-.

8. In this view of the matter, the entire selection process carried by the Staff Selection Committee was without authority of law and could not have been taken into account. In the circumstances, the General Body was justified in exercising its power under Section 53(1) of the said Act, selecting the petitioner who was already in service of the Corporation and a person of their choice.

9. In this regard, we may further note that under Section 54(2) which pertains to appointment by the Staff

Selection Committee, apart from the exception in relation to appointments to posts referred to in Sub-section(1) of Section 53, there is an exception which relates to post which the Corporation may specify with the previous approval of the State Government. There are two other exceptions. One pertains to posts which are proposed to be filled from amongst the persons already in Municipal service and the second exception is in respect of appointment of a temporary character and is not likely to last for more than six months.

10. It appears therefore, that if the Corporation decided to make an appointment from amongst the persons who were in Municipal service, the same was permissible. There is no necessity to make such appointment through the Staff Selection Committee and it would be legal on the part of the General Body of the Corporation to make such appointment since the power of appointment vests solely in Corporation under Section 53(1) of the Act.

11. In this view of the matter, the mandatory provision of Section 54(3) does not come into play as the Municipal Corporation can make an appointment directly by exercising power under Section 53(1) of the Act. Thus, the reference made by the Municipal Commissioner to the State Govt. for rescinding the impugned Municipal Resolution passed by the General Body

of the Corporation was unwarranted and unnecessary.

12. The learned A.G.P. brought to our notice the order passed by this court on 4.2.2007 in W.P.No.1920 of 2007. It was contended that while considering a similar resolution passed by the State of Maharashtra relating to another post and which was passed in similar circumstances, the matter was relegated to the State Govt. to consider the same according to law and the appointment of the Respondent No.3 who was the final appointee, was not interfered with. We however, find that the said petition was not admitted and there is no final finding on the point of law involved. This order is not a precedent and it contains no ratio which has binding force. Since the matter is argued at length before us, we have gone into the relevant provisions of law and rules which covers the case.

13 In the circumstances, the petition is allowed in terms of prayer clause (B). As a consequence of grant of prayer clause (B), the appointment order dated 14.2.2007 appointing Respondent No.4 to the post of Dy. Project Officer will have to be quashed and set aside and is accordingly, set aside. In the facts and circumstances of this case, there will be no order as to costs. Petition is disposed off.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**

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Mrs. M.P.Thakur, AGP. for the Respondent No.1.

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CORAM: S.B.MHASE &
R.S.MOHITE, JJ.
DATE : 25/4/2007.

ORAL JUDGMENT (Per R.S. Mohite, J.)

1. For the reasons separately recorded in the judgment, this court passes the following order.

2. The petition is allowed in terms of prayer clause (B). As a consequence of grant of prayer clause (B), the appointment order dated 14.2.2007 appointing Respondent No.4 to the post of Dy. Project Officer will have to be quashed and set aside and is accordingly, set aside. In the facts and circumstances of this case, there will be no order as to costs. Petition is disposed off.

(R.S. MOHITE, J.) **(S.B. MHASE, J.)**